

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

LINDA JANN LEWIS, MADISON LEE,
ELLEN SWEETS, BENNY ALEXANDER,
GEORGE MORGAN, VOTO LATINO,
TEXAS STATE CONFERENCE OF THE
NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE,
and TEXAS ALLIANCE FOR RETIRED
AMERICANS,

Plaintiffs,

vs.

RUTH HUGHS, in her official capacity as
Texas Secretary of State,

Defendant.

Civil Action No. 5:20-cv-00577

Related to *Gloria et al. v. Hughs et al.*,
No. 5:20-cv-00527

JOINT SCHEDULING PROPOSAL

The Court issued an order on June 26, 2020 (Dkt. 27) directing the parties to confer and submit proposed scheduling orders for discovery and briefing regarding Plaintiffs' Motion for Preliminary Injunction. Counsel for the parties conferred on July 1, 2020 but were unable to reach agreement on a proposed schedule. Accordingly, this joint submission contains a brief summary of each Party's position and their proposed schedules.

Position of Plaintiffs:

Plaintiffs propose a five-week timeline for Defendants to complete discovery and briefing related to Plaintiffs' motion for a *preliminary injunction*. Preliminary injunction motions, which provide litigants with temporary relief from imminent and irreparable injury, are time sensitive and require prompt resolution. Plaintiffs disagree with the

Secretary's presentation of deadlines—for example, the Secretary's motion for an extension of time points to September 19 (the date that UOCAVA requires military and overseas ballots to be mailed) as a date of import here, but UOCAVA is not germane to Plaintiffs' claims for relief, and more broadly, Plaintiffs' claims are generally not contingent on any ballot mailing deadline. In any event, to the extent that September 19 is a meaningful date, Plaintiffs' proposed schedule allows for a hearing well before then, and of course far in advance of Election Day.¹

Deadline for serving written discovery	July 7, 2020
Deadline for serving responses to written discovery	July 20, 2020
Deadline for taking depositions related to preliminary injunction motion ²	July 24, 2020
Deadline for Defendants' response to preliminary injunction motion	August 3, 2020
Deadline for Plaintiffs' reply in support of preliminary injunction motion	August 10, 2020

¹ To the extent Defendants insist on more time to respond to Plaintiffs' preliminary injunction motion than the extended schedule above—which already provides over a month more time than the rules contemplate—Plaintiffs may agree to more time so long as Defendants agree not to claim that a more protracted briefing scheduling would then result in a decision from the Court that is then too close in time to Election Day to grant the relief that Plaintiffs seek.

² Because this is a discovery schedule regarding a preliminary injunction motion, this is not the only window in which the parties would be able to take depositions. The date Plaintiffs propose here only concerns depositions that are reasonably necessary to support a Party's preliminary injunction response or reply.

Position of Secretary Hughes:

As Secretary Hughs explained in her motion for an extension of time to file a response, she needs adequate time to conduct discovery on Plaintiffs' claims before she can file a response. ECF 25. Plaintiffs' motion for a preliminary injunction contains 300 pages of exhibits, including declarations from four expert witnesses and 14 other fact witnesses. All of these witnesses need to be deposed for Secretary Hughs to test their allegations and fully respond to Plaintiffs' claims. Likewise, to the extent that Secretary Hughs will also need to retain her own experts, her experts' opinions will likely be shaped by the facts uncovered in discovery. Secretary Hughs anticipates that Plaintiffs will want the opportunity to file rebuttal expert reports, and Secretary Hughs will need an opportunity to respond in briefing to those rebuttal reports.

As such, Secretary Hughs proposes the following schedule:

Discovery on Plaintiffs' claims begins as soon as the Court enters a scheduling order.	
Deadline for Secretary Hughs to disclose expert witnesses used to respond to Plaintiffs' motion for a preliminary injunction	September 2, 2020
Deadline for Plaintiffs to disclose any rebuttal experts	September 16, 2020
Discovery cutoff for discovery related to Plaintiffs' motion for a preliminary injunction	September 23, 2020
Deadline for Secretary Hughs's response to Plaintiffs' motion for a preliminary injunction	September 30, 2020
Deadline for Plaintiffs' reply in support of their motion for a preliminary injunction	October 7, 2020

Secretary Hughs makes no representation about how this schedule would affect the county election officials—third parties not in front of this Court—who are responsible for implementing the provisions that Plaintiffs challenge. *See ECF 17.* Secretary Hughs expressly reserves the argument that Plaintiffs are seeking injunctive relief too close to the election in violation of *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (per curiam). The time periods above are the absolute minimum required for Secretary Hughs to have notice and a meaningful opportunity to respond as required by Federal Rule of Civil Procedure 65(a)(1). *See PCI Trans., Inc. v. Ft. Worth & W. R. Co.*, 418 F.3d 535, 546 (5th Cir. 2005).

Dated: July 2, 2020

Respectfully submitted,

/s/ Skyler M. Howton

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COUNSEL FOR DEFENDANT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 2, 2020, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/ Skyler M. Howton

Skyler M. Howton